IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2486 OF 2004

Mohit V. Thakar,)
of Bombay, Indian Inhabitant,)
residking at 8-B, Abhay Society,)
Opposite Indian Bank, S.V.Road,)
Santacruz (West),Mumbai-400 054.)...Petitioner

Versus

Associated Cement Companies Ltd.)
having its registered office)
at Cement House, 121, Maharshi)
Karve Road, Churchgate,)
Mumbai-400 020.)....Respondent

Mr.P.M.Patel for the Petitioner
Mr.J.P.Cama , Senior Counsel with Ms. Savita Upadhyay
& Ms.Mosan Modi i/b.Haresh Mehta & Co., for the
Respondents.

CORAM: F.I. REBELLO, J.
DATE : 14th September,2004

JUDGMENT:

. The petitioner workman aggrieved by the order of the Industrial Court rejecting his application for interim relief in the matter of his transfer has preferred the present petition. The petitioner is employed with the respondent. He was transferred by order of 28th May, 2004 to Kalamboli. A complaint of unfair labour practice was filed under Items 3,9 and 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971. The transfer was challenged on the grounds that the employee cannot be transferred at new business place even if there is power to transfer. The transfer is by way of victimisation and will result into mental and physical hardship and the transfer order was not issued by the Competent Authority. At the hearing of this petition on behalf of the petitioner his learned Counsel relies on the judgment in the case of M/s.Kundan Sugar Mills v. Ziyauddin & Ors.,AIR 1960 S.C.650 to contend that in the absence of any express term in the

contract of the services between the employer and employee that the latter should serve in any future concerns which the former might acquire or start, a person employed in an establishment cannot be transferred to some other independent concern started by the same employer at another place at a stage subsequent to the date of his employment. In the instant case, it is pointed out that, the works at Kalamboli were not in existence when the petitioner joined the services and in the circumstances he could not be transferred. On the other hand on behalf of the respondents their learned Counsel contends that the judgment in Kundan Sugar Mills (supra) will have to be restricted to a case where the same proprietor commenced another business at another place which was not in existence when the first business was commenced and a workman employed therein. It was also pointed out that this Judgement has been considered by a learned Single Judge of the Delhi High Court in General Marketing and Manufacturing Company Ltd.

and Presiding Officer and others, 2000 (2) L.L.N.591.

2. Having heard learned Counsel in my opinion there is no case warranting interference by this Court. Firstly, the transfer is incidence of service. It therefore, really cannot be said that the petitioner could not be transferred. The establishment is owned by the respondent NO.1. Admittedly, it is a new establishment. The question really is then considering the ratio in Kundan Sugar Mills (supra) the order of transfer can be said to be arbitrary and/or an act which amounts to unfair labour practice. In Kundan Sugar Mills (supra) what is clear is that the employer owned sugar mill at Amroha. They subsequently purchased another sugar mill at Bulandshahr. The Respondents were employed by the owners at

the sugar mill at Amroha. They were not then proprietors of the sugar mill at Bulandshahr. On material evidence The Apex Court found that the two mills are situated at two different places, with accounts separately maintained and governed by different service conditions, though they happened to be under the common management. The Apex Court held that the two factories are distinct entities situated at different places and in these circumstances it will not be possible to import a term conferring right on the employer to transfer the respondent No.1 to 4 to a different concern is really to make a new contract between them. In the instant case we are not concerned with the situation where the employee in one establishment is sought to be transferred to some other independent establishment owned by the same employer. In the instant case the employer is same. In the course of employment he has started some other establishment. In these circumstances the ratio in Kundan Sugar Mill (supra) is clearly distinguishable and would not be attracted. Once that be the case, no cause for interference. Hence petition rejected.

. For the aforesaid reasons, I find no merits to interfere at this stage. Hence Petition rejected.

(F.I. REBELLO, J.)